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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 Nexa Mortgage LLC,

9 Plaintiff,

10 vs.

11 Smart Mortgage Centers Incorporated,
12 et al.,

13 Defendants.
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No. CV-23-00410-PHX-SPL

ORDER

15 Before the Court is Defendant Smart Mortgage Centers Incorporated's Motion
16 (Doc. 68), in which it requests a 60-day "continuance" of this action, which this Court
17 interprets as a request for an extension of time for Defendant to file a Response to Plaintiff's
18 Motion for Summary Judgment (Doc. 66). Defendant is currently unrepresented by counsel
19 and filed its Motion by way of Defendant's President Richard Birk's son, Brian Birk, "in
20 anticipation of retaining legal counsel."¹ (Doc. 68 at 1).

21 As the Court noted in its February 4, 2025 Order granting Defendant's Application
22 for Withdrawal as Counsel (Doc. 61), Smart Mortgage Centers Incorporated, as an entity,
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24 ¹ To the extent that Brian Birk is filing as a personal advocate on behalf of Richard
25 Birk, such representation is not permitted in this Court. A non-lawyer "has no authority to
26 appear as an attorney for others than himself." *Johns v. Cnty. of San Diego*, 114 F.3d 874,
27 877 (9th Cir. 1997) (citation omitted). In limited circumstances, Federal Rule of Civil
28 Procedure 17(c)(2) provides that an incompetent person who does not have a duly
appointed representative may sue by a "next friend" appointed by the Court. Fed. R. Civ.
P. 17(c)(2). However, here, no such appointment has occurred, nor is it appropriate for the
Court to assess Robert Birk's competence and potentially appoint a next friend, as Robert
Birk is not a party in this action.

1 cannot appear pro se in this matter. *See In re Am. W. Airlines*, 40 F.3d 1058, 1059 (9th Cir.
2 1994) (“Corporations and other unincorporated associations must appear in court through
3 an attorney.”). In that Order, the Court advised Defendant that the Court would not permit
4 it “to file any document or appear in any proceeding in this action through any managing
5 member or other non-attorney, and that if it does not obtain new counsel licensed to practice
6 before this Court it will be subject to having default and default judgment entered against
7 it.” (Doc. 61 at 1 (citing *United States v. High Country Broad. Co., Inc.*, 3 F.3d 1244, 1245
8 (9th Cir. 1993))). Accordingly, Defendant’s Motion for Continuance will be stricken.

9 However, in the interest of justice, the Court will exercise its *sua sponte* discretion
10 to provide Defendant an additional thirty (30) days to obtain counsel and respond to
11 Plaintiff’s pending Motion for Summary Judgment (Doc. 66). The Court reemphasizes that
12 Defendant must obtain counsel in order to file any document or appear in any proceeding
13 in this action. *See In re Am. W. Airlines*, 40 F.3d at 1059. If Defendant fails to obtain
14 counsel and respond to Plaintiff’s Motion for Summary Judgment (Doc. 66), the Court
15 advises Defendant that it will rule on the Motion for Summary Judgment without a
16 Response and that the failure to respond may be treated as consent to the granting of the
17 motion. *See* LRCiv. 7.2(i). Further, the parties are advised that the Court will not extend
18 the dispositive motion deadline any further based on a change in counsel, and the parties
19 should plan their litigation activities accordingly.

20 **IT IS THEREFORE ORDERED** that the Clerk of Court shall **strike** Defendant’s
21 unauthorized Motion for Continuance (Doc. 68).

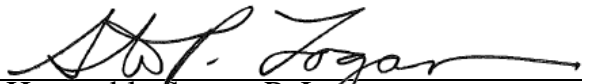
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1 **IT IS FURTHER ORDERED** that Defendant Smart Mortgage Centers
2 Incorporated shall have until **6/9/2025**, to, first, obtain counsel and for said counsel to
3 appear in this matter and, second, respond to Plaintiff's pending Motion for Summary
4 Judgment (Doc. 66).

5 Dated this 9th day of April, 2025.

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8 Honorable Steven P. Logan
9 United States District Judge
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